

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 31 2003

PATRICK FISHER
Clerk

ANGEL ARELLANO,

Plaintiff - Appellant,

v.

GARY WATKINS, Warden of Limon
Correctional Facility,

Defendant - Appellee.

No. 02-1358
(D.C. No. 02-Z-856)
(D. Colorado)

ORDER AND JUDGMENT*

Before **SEYMOUR, MURPHY, and O'BRIEN**, Circuit Judges.

After examining appellant's brief and the appellate record, this court has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Appellant Angel Arellano, a state prisoner incarcerated in Colorado, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 asserting violations of his federal civil rights. The district court granted Arellano's motion to proceed *in forma pauperis* and ordered Arellano to pay an initial partial filing fee of \$4.00 or show cause why he had no means by which to pay the initial fee. *See* 28 U.S.C. § 1915(b)(1). Arellano was specifically directed that to show cause he was required to file a current certified copy of his prison trust fund account statement. He was also warned that his complaint would be dismissed if he failed to either pay the initial partial filing fee or show cause within thirty days. Arellano did not pay the partial filing fee or provide the current trust fund account statement. Consequently, the district court dismissed the complaint without prejudice. Arellano then brought this appeal.

In his appellate brief, Arellano does not address the grounds upon which the district court dismissed his complaint but, instead, presents arguments that go to the merits of the claims asserted in his complaint. Although a copy of his prison trust fund account statement is attached to the motion to proceed *in forma pauperis* Arellano has filed with this court, Arellano does not explain his failure to provide a copy of his trust fund account statement to the district court pursuant to the court's order. Accordingly, this court **affirms** the district court's dismissal of Arellano's complaint. Arellano's motion to proceed *in forma pauperis* on

appeal is **granted** . Arellano is reminded that he remains obligated to continue making partial payments until his appellate filing fee is paid in full. *See id.* § 1915(b).

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge